

## RIGHT OF MAINTENANCE OF WIFE – AN OVERVIEW WITH REMEDIAL SUGGESTIONS AS TO DESIRABLE CHANGES IN LAW

*Shwetta Bajaj*

*Dean, Institute of Law & Research, Faridabad, Haryana, India*

**Received: 04 Jun 2019**

**Accepted: 10 Jun 2019**

**Published: 21 Jun 2019**

### **ABSTRACT**

*Despite the right of maintenance for wife and children enshrined in various statutory provisions, owing to the protracted nature of legal proceedings, the wife and children often have to suffer tremendous hardship by the time the courts pass the final order granting maintenance. The judicial trend to widen the ambit of maintenance laws so as to fulfill the intention of legislature in enacting these beneficial provisions is worth appreciation but still a lot has to be done to provide social justice to women and enable her to live with dignity as guaranteed under Article 21 of the Indian Constitution. The present paper besides highlighting the judicial trend lays down certain remedial suggestions as to desirable changes in the present law of maintenance.*

**KEYWORDS:** *Statutory, Legislations, Maintenance*

### **INTRODUCTION**

Study on the subject of maintenance of wife reveals that in the Indian legal system, basically, there are two major set of laws. First set of laws is almost uniform and secular in its application to all Indians regardless of their caste, religion, community or region. Another set of laws is not uniform but is consisting of very many community-based, uncodified and/or codified, customary laws.

As far as, our first uniform law is concerned, it is a comprehensive chapter of the Code of Criminal Procedure, 1973 which lays down the powers and jurisdiction of the magistrate to grant maintenance to wife to avoid vagrancy and destitution in furtherance of social justice.

### **Expanded Scope of Laws of Maintenance**

After being amended in 1973, the Code has rather expanded scope and operation of its provisions regarding wife's maintenance so much as to include in its broader ambit not only the provision of maintenance during her subsisting marriage but also a widow or a divorcee belonging to any community.

The Courts vide catena of judgments have broadened the ambit of statutory provisions regarding right of maintenance of wife so as to fulfill the objective and intention of the legislature while enacting these provisions.

Inorder to attain the objectives of the beneficial legislations, the Apex Court in several cases has held that according to Section 125 of the Cr.P.C, the Magistrate can award maintenance payable from the date of the order or, if he so directs, from the date of application for maintenance. However an express order from the Magistrate is necessary to

award maintenance from the date of application.

Enforcement and execution of the maintenance order is done keeping the spirit of Code in view so as to help the defendant weaker sex by issuing warrants, attachment of property or even imprisonment in default of the husband. In keeping with the same spirit, the Courts may restore or revive an application for execution dismissed earlier. In case of revision filed by the husband the High Court's tendency seems to be of non-interference with the maintenance order.

Another Secular law of uniform application to all Indians is the Special Marriage Act of 1954 that also recognizes the husband's liability to pay maintenance to the wife but only during the subsisting marriage and not in case of divorce.

Taking note of the increase in domestic violence against women and the need of its immediate redress, Parliament had enacted Protection of Women from Domestic Violence Act 2005. This is another secular law under which a wife as well as female live-in partner (in the nature of marriage) may seek maintenance/compensation. The Woman who is a victim of domestic violence within the meaning of this Act may approach the magistrate's court for inter alia, maintenance/compensation. The provisions of this law come to the rescue of women irrespective of her religion and irrespective of the fact whether she is a legally wedded wife. The Supreme Court in D. Velusamy v. D. Patchaiammal (SC) clarified that if a woman proves that she was in domestic relationship with the man in the nature of marriage, she would be entitled to claim maintenance under Section 20(3) of Protection of Women From Domestic Violence At, 2005.

Section 20 of the Act is meant to ameliorate the financial condition of the aggrieved person, who may suddenly find herself to be without a hearth and home. Financially, the aggrieved person may exist in a suspended animation, if she is neither supported by the husband, nor by her parents. In order to protect women from such a purgatory, Section 20 bestows a right to seek monetary relief in the form of compensation and maintenance. Section 20, thus, is a powerful tool for ensuring gender equality in economic terms. Section 20, does not contain any exception in favour of the husband. In fact, it recognizes the moral and legal duty of the husband to maintain the wife.

The provision of maintenance is available in various statutes but the Courts have invariably held that multiplicity of maintenance is not allowed.

### **Desirable Changes in Laws of Maintenance**

Existing laws of maintenance are disparate and scattered owing to the secular character of our nation and provision of maintenance being deeply twined with the institution of marriage, the governing principle and laws regarding the same are determined by the religion of the parties concerned. However taking into account that economic needs of an individual are not dependent on the religion, the laws of maintenance in order to fulfill their objects must be changed / reformed so that maximum benefit is given to the needy without undergoing any harassment and hurdles. In view of the above certain suggestion are mentioned below to bring the desirable changes in maintenance law so as to achieve the objectives of these laws.

### **Remedial Suggestions**

- In a maintenance order passed under Section 125 of Cr. P.c., husband should be liable to undergo rigorous imprisonment (to serve as a deterrent) for a term that may extend to 6 months and should also be liable to pay a fine equal to twice the amount of arrears of maintenance or permanent alimony.

- In many cases where the husbands are the petitioners and maintenance orders are passed against them, even after flouting these orders their matters continue to proceed. Principally, there should be a stay of the proceedings. The judges must not permit the defaulting petitioner to flout the orders of the same court before which he appears. In this regard judges can play an active role.
- While assessing the income or assets of the husband for ascertaining the maintenance amount, the judges must take assistance from social workers, NGOs and probation officers who could, inter alia, draw inference from standard of living of the family. Amount of maintenance must be deposited in the court in the beginning of every month, to ensure that the wife receives her dues in time.
- An important recommendation was made by the Committee on the Status of Women for the effective realization of amounts granted under maintenance orders, namely, all maintenance orders should be deducted at source by the employer and that in other cases arrears of maintenance should be recovered as 'arrears of land revenue or by distress'. These statutory recommendations, which will mitigate the hardships of women, still await implementation.
- The grant of maintenance should be made solely on the basis of need and legislative provisions that limit maintenance on the basis of subsequent conduct should be deleted.
- The provisions of maintenance in various statutes have been made conditional upon certain norms of behaviour. Hindu Marriage Act 1955 (HMA), require that the wife in whose favour the maintenance has been granted should be chaste and should not remarry. Cr. P.C requires the wife not to be 'living in adultery', while Hindu Adoption and Maintenance Act, 1956 imposes the condition that she remains chaste and not cease to be a Hindu by conversion to another religion. This position may be compared to that of a widow who succeeds to the property of the husband on his death. She does not forfeit her right in the property either by subsequent unchastity or by remarriage. The conditions imposed for grant of maintenance points out the coercive nature of such prescriptions which needs to be changed.
- The existing priority accorded to debts over maintenance rights should be discarded under all laws. The provision should be extended to claims for dower under Muslim law.
- Maintenance claims should be considered as secured debts.
- The recommendations contained in the 73rd Report of the Law Commission relating to enforcement of maintenance claims must be implemented.
- Maintenance amounts granted by the courts should be deducted at source by employers from salaries, and in other cases, arrears of maintenance should be recoverable as arrears of land revenue, or by distress.
- The burden should be shifted to the earning member to prove his or her income.

- Under the Code of Criminal Procedure, 1973 the wife's right to claim maintenance from husband depends on the husband having sufficient means. No doubt inclusion of the right of maintenance under the Code of Criminal Procedure has great advantage of making the remedy both speedy and cheap and is available to all irrespective of their religion however it is suggested that provision should be made to mandatorily dispose of such complaints within 60 days.
- It is no exaggeration to observe that courts in our country are burdened with heavy work load, it is submitted that provisions of Cr.P.C.1973 should be so amended or modified which may have the effect of preventing contumacious defaulters from labeling the false accusation during the enforcement proceedings and at the same time protect the genuine and honest objections. It is suggested that provision for punishment of defaulters up to minimum 15 days to maximum 6 months must be provided under Cr.P.C.
- It is also suggested to establish effective enforcement machinery for enforcement of maintenance award as the purpose of Act is to prevent destitution and vagrancy must be accomplished.
- It is also submitted that law related to maintenance should be so amended to deal with maintenance of second wife, sister, and partners in live in relations and of husband who is not able to maintain himself etc. in a clear way. It is also seen that position in India is changing.
- It is suggested that more clarity is required in the statutory laws of maintenance so as to leave no scope of misinterpretation by the Courts. Delhi High Court's observation in the case of Sanjay Bhardwaj & Ors. vs The State & Anr.<sup>1</sup> that "No law provides that a husband has to maintain a wife, living separately from him, irrespective of the fact whether he earns or not"-- is clearly contrary to the intention of legislature behind enacting various provisions of maintenance of wife. Changes should be so made in the enactments that leave no scope of such interpretation.
- It is also suggested that at the time of deciding the quantum of maintenance to wife, Law and Courts must take into consideration the time and efforts invested by wife in running the family affairs. Usually, the contribution of wife in the family is not monetarily compensated but in all claims of maintenance the Courts must give due regard to the contribution of wife in running the family affairs and thereafter fix the quantum of maintenance.
- It is suggested that as recently recommended by the Planning Commission's working group on Women's Agency and Empowerment a comprehensive legislation on 'Right to Marital Property Act' –must be brought in which would be applicable to all communities wants. The Commission wants a complete re-look at family laws. Some of the suggestions recommended by the Commission are listed below;
- The Commission has also suggested a review of laws related to maintenance to ensure that separated women and children got an adequate amount of maintenance and custody rights. It suggested removing all discriminatory provisions in existing laws that link a woman's conduct with the grant of maintenance.

<sup>1</sup> On 27 August, 2010 Crl.M.C.No. 491/2009

- The Commission has also suggested that all movable and immovable assets acquired by a married couple or a couple living together be classified as joint property which would be divided equitably in the event of separation or desertion.
- The panel argued that laws should be framed with a view to place the onus on the husband to prove his income and the quantum of maintenance awarded should enable the wife and children to live at the same standard of living that they have been used to.
- It suggested that government should be made responsible for recovery of the maintenance amount, along with creation of a fund to pay the maintenance awarded by the court, particularly to poor litigants.
- There is no doubt that the changes as recommended by the Commission are the need of the day. The changes once introduced would certainly uplift the economic independence of women and would help in providing speedy and just maintenance to women and children; thereby directly facilitate the purpose behind these social legislations.
- Introduction of the concept of Matrimonial property.

The Indian patriarchal system strengthens control over material assets in favour of males and perpetuates stereotyping of roles firming financial dependency of women on men. An Indian woman's assumption of household responsibilities takes her nowhere if after spending substantial part of her life in domestic drudgery a broken marital cord forces her to fight for her survival. In the absence of evaluation of home making as an economic contribution, this important though un-remunerative work does not translate into a right to own material assets looked after by a wife as part of her house keeping. Control and ownership of material assets is miles apart from a long drawn battle for a meager quantum of maintenance to be squeezed out from the pocket of an unwilling husband under the compulsions of a court's direction. In a case before the apex court, the parties who were married in 1959 lived together for 31 years when the husband filed a petition for divorce that was granted to him eight years later. The wife filed an application for a declaration of her half right in the property that stood in the name of the husband and husband and his other family members and a perpetual injunction restraining the husband and others from alienating the property. She pursued her proceeding for declaration and injunction relating to the properties even after grant of divorce. The family court dismissed the claim and held that the appellant had failed to prove that the properties standing in the name of her husband and others, were joint acquisitions or that she had a half share therein. Aggrieved by the dismissal of her claim in respect of the immoveable properties, the appellant filed an appeal before the High Court of Bombay which found that there was no reason to differ from the conclusions of the family court regarding the title to the properties and the finding that the appellant had no joint ownership in the properties. The appellant thereupon filed a revision petition seeking a review of the order as also for condoning the delay in filing the appeal. The division bench of the High Court found no ground to review the order earlier made. The matter went to the Supreme Court. The court held that the appellant ought to be given an opportunity to argue her appeal on merits. The court also noted that the issue relating to matrimonial property was important and did not deserve a casual dismissal as was done by the revision court.

Ironically, under the Hindu Marriage Act though there is a provision relating to division of matrimonial property, the concept of matrimonial property includes only the joint acquisitions by the husband and the wife and if the wife fails to show monetary contribution towards property acquired by the husband, the husband alone remains the owner. A share in

such property cannot be claimed by the wife even if by assumption of domestic responsibilities, she had enabled the husband to go out free of tension and earn a livelihood and her rights are reduced to a claim of maintenance only.

## CONCLUSIONS

It is suggested that there is an eminent need for reforms and changes to be introduced in the laws of maintenance of wife and children. The Parliament, the Courts and the society at large must depict their sensitivity over the issue of maintenance recognizing the vulnerability of women in this cruel world. Women, being a keeper of hearth in home, need to be protected as they are the foundation of any society. If women are exposed to physical abuses, to sexual exploitation, the very foundation of the society would begin to weaken. Thus, both the law and society must recognize a moral and legal duty of the husband to maintain the wife and children.

## REFERENCES

1. 2010(7) *RCR (Criminal)*
2. 2008 (10) *SCALE*
3. *Kumud Desai's Indian Law of Marriage & Divorce ( 8<sup>th</sup> Edition) 2011 Lexis Nexis Butterworths*
4. *Matrimonial Property Law in India, Oxford University Press, New Delhi*